

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed August 29, 2006. Applicants respectfully request reconsideration and favorable action in this case.

Section 102 Rejections

The Examiner rejects Claims 1-6 and 8-18 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,914,953 issued to Krause et al. ("Krause"). This rejection is respectfully traversed for the following reasons.

Applicant respectfully reminds the Examiner that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.<sup>1</sup> In addition, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claims" and "[t]he elements must be arranged as required by the claim."<sup>2</sup> In regard to inherency of a reference, "[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic."<sup>3</sup> Thus, in relying upon the theory of inherency, an Examiner must provide a basis in fact and/or technical reasoning to support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.<sup>4</sup>

Using this well settled jurisprudence, it is clear that *Krause* cannot inhibit the patentability of Independent Claim 1 because *Krause* fails to teach a method for routing messages in a network, said method comprising the steps of identifying a first one message of a first plurality of messages, said first plurality of messages having at least one first routing treatment in common and recording said first routing treatment, wherein said step of recording comprises building an entry in a flow cache.

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<sup>1</sup> *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131.

<sup>2</sup> *Richardson v. Suzuki Motor Co.*, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 USPQ 2d 1566 (Fed. Cir. 1990); MPEP §2131 (*emphasis added*).

<sup>3</sup> MPEP §2112 (citing *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ 2d 1955, 1957 (Fed. Cir. 1993) (*emphasis in original*)).

<sup>4</sup> MPEP §2112 (citing *Ex Parte Levy*, 17 USPQ 2d 1461, 1464 (Bd. Pat. at App. and Inter. 1990) (*emphasis in original*)).

A fundamental issue with regards to the Examiner's rejection relates to the preamble of Independent Claim 1, which addresses *network routing*. There is a good-faith argument to be made that *Krause* is not even analogous art. At the most-frequently passage cited by the Examiner (Column 31, lines 53-67), *Krause* discusses accessing specific internal portions of memory. The Examiner mistakenly uses this to teach the identification of a *routing treatment* and the recording of such a routing treatment. Clearly, these two are not the same, as there is no network routing being performed in *Krause* during such operations. Attorney for Applicants genuinely questions why this reference is even being cited in this prosecution.

For at least these reasons, Independent Claim 1 is clearly allowable over the cited reference. All of the other Independent Claims include a similar limitation and, thus, are also allowable over these references for analogous reasons.

Conclusions

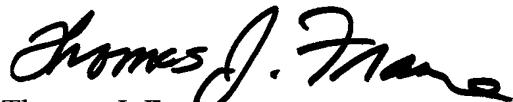
Applicants have now made an earnest attempt to place this case in condition for allowance. For the foregoing reasons and for all other reasons clear and apparent, Applicants respectfully request reconsideration and allowance of the pending claims.

Applicants believe that no fees are due. However, if this is not the case, the Commissioner is hereby authorized to charge any amount required or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

If there are matters that can be discussed by telephone to advance prosecution of this application, Applicants invite the Examiner to contact Thomas J. Frame at 214.953.6675.

Respectfully submitted,

BAKER BOTTS L.L.P.  
Attorneys for Applicants



Thomas J. Frame  
Reg. No. 47,232

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Correspondence Address:

**Customer Number: 05073**